

OLL 85-3531

Office of Legislative Liaison

Routing Slip

TO:	ACTION	INFO
1. D/OLL		X
2. DD/OLL		X
3. Admin Officer		
4. Liaison		
5. Legislation	X	
6. [Redacted]		X
7.		
8.		
9.		
10.		

SUSPENSE

15 Nov 85
Date

Action Officer:

Remarks:

Gina/14 Nov 85
Name/Date



**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET**

WASHINGTON, D.C. 20503

November 15, 1985

LEGISLATIVE REFERRAL MEMORANDUM

85-3581

3592

ORIGINAL

TO:

Department of the Treasury - Carole Toth (566-8523)
Department of State - Lee Ann Berkenbile (632-0430)
Central Intelligence Agency
National Security Council

SUBJECT: REVISED Department of Justice testimony on S. 1654,
the proposed amendments to the espionage laws.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with Circular A-19.

Please provide us with your views no later than COB -- 11/15/85.

Direct your questions to Gregory Jones (395-3454), of this office.


James C. Murr for
Assistant Director for
Legislative Reference

Enclosures

cc: Russ Neely
Karen Wilson

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to be here today to present the views of the Department of Justice on S.1654, the proposed amendments to the espionage laws. This bill is designed to provide awards to informers who expose espionage activities and to add forfeiture penalties against those individuals who are convicted of engaging in such activities. We greatly appreciate the Committee's willingness to hold this hearing to consider legislation which may be a major aid in our efforts to protect our national security interests.

Espionage in the United States appears to be motivated increasingly by a desire for profit as evidenced recently by the Walker espionage prosecutions and other cases. We believe that it is appropriate to take steps now that will make clear our resolve to eliminate the profits which serve as an incentive for individuals to engage in espionage activity. Because this bill provides the mechanism for reaching such profits, we support its purpose wholeheartedly. Nevertheless, we have some reservations concerning several aspects of S.1654, which we believe the Committee should seriously consider before recommending enactment.

First, S.1654 contains a provision which authorizes the Attorney General to reward individuals who provide information leading to an espionage conviction. The maximum award is \$100,000, and any award of \$10,000 or more requires approval at the highest levels of the Department of Justice. The Department of Justice appreciates the national security concerns which prompted the proposal to provide cash awards to informants in espionage cases. We believe, however, that this provision is unnecessary, and may even be counterproductive. The Federal Bureau of Investigation is already empowered to authorize payments for, and provide case rewards to individuals who provide information leading to convictions for federal criminal offenses, including espionage. Our experience does not demonstrate that an additional award program is likely to assist in any measurable way in the detection or exposure of national security crimes. Moreover, we are concerned that legislation expressly providing for cash awards in these cases may have the unintended effect of impeding ongoing national security investigations.

Unlike other investigations in criminal matters, foreign counterintelligence and espionage investigations are classified and conducted secretly, for they usually involve extremely sensitive sources and methods. These investigations can take years to reach fruition. Prosecutive needs are always balanced

against the need to protect against the disclosure of sensitive sources and methods. Occasionally, espionage cases are not prosecuted because of lack of evidence, national security concerns or other reasons. However, the secrecy of the existence of the investigation is maintained even when such cases are closed. An award program specifically dedicated to national security offenses raises the possibility that a frustrated informant could attempt to make public his claim for an award, through litigation or other means, thereby breaching the confidentiality of the investigation. The consequences of such a breach could not only severely impair our ability to conclude an ongoing investigation successfully, but could also result in the exposure of sensitive sources and methods. Therefore, we respectfully oppose the provision for such awards on the grounds that, although they might be productive in some law enforcement areas, there is a greater risk that they will be counterproductive in combating espionage.

Second, S.1654 provides that the forfeited proceeds which a defendant convicted of espionage might realize from a production or publication relating to his espionage violation will be paid into the general fund of the Treasury of the United States. This provision of S.1654 is similar to 18 U.S.C. §3671 which is also designed to reach the indirect or collateral proceeds of crime derived from publication or production of a defendant's story.

Title 18 U.S.C. §3671 applies to federal crimes which have resulted in physical harm to individual victims, and the proceeds forfeited are retained in a special Crime Victims Fund. There are no individual victims of espionage violations. The national security of the United States is the victim in espionage cases, and it is therefore appropriate that such indirect or collateral proceeds of espionage should be paid into the United States Treasury after forfeiture just as the same types of indirect proceeds forfeited under 18 U.S.C. §3671 are paid into a victims fund. However, we have noted that S.1654 is not explicit concerning the disposition of amounts realized by the United States from the forfeiture of property acquired directly from espionage or from property used in espionage. We would like to point out that under already existing law such amounts would be deposited in the Department of Justice Assets Forfeiture Fund pursuant to 28 U.S.C. §524(c)(4). We therefore suggest for the sake of clarity that S.1654 include a new 18 U.S.C. §794(d)(5) which would specify that amounts realized from forfeitures under subsection (d) will be deposited in the Department of Justice Assets Forfeiture Fund in accordance with 28 U.S.C. §524(c)(4).

I would also mention that if the awards provisions is retained in S.1654, the Department of Justice would suggest that it be reconciled with the existing awards system contained in 28 U.S.C. §524(c). Pursuant to 28 U.S.C. §524(c)(1)(B), the

Department of Justice Assets Forfeiture Fund is available to pay awards for information or assistance leading to forfeitures for drug and racketeering violations. Under 28 U.S.C. §524(c)(2) the maximum award is the lesser of \$150,000 or one-fourth of the amount realized by the United States from the property forfeited. The proposed awards scheme for espionage cases differs significantly from this existing statutory scheme for awards from the Department of Justice Assets Forfeiture Fund. The key inconsistencies between S.1654 and the existing awards scheme under 28 U.S.C. §524(c) are first, S.1654's provision for separately appropriated awards as opposed to awards being paid from the Assets Forfeiture Fund, and, second, S.1654's \$100,000 maximum award as opposed to the limitation based upon the amount realized from the forfeiture. If the awards provision is retained in S.1654, the Department of Justice would prefer that it be designed to conform to the existing awards framework in 28 U.S.C. §524(c).

Last, the Department of Justice wishes to point out that the currently proposed Money Laundering and Related Crimes Act of 1985 (S.1335) contains proposed legislation (18 U.S.C. §2322 and §2601) which provides for forfeiture of the knowingly possessed proceeds of any federal felony. S.1654's proposed forfeiture amendments to 18 U.S.C. §794 reach other property interests of the defendant in addition to proceeds of the violation, but the

primary purpose appears to be the forfeiture of such proceeds. S.1335 appears to accomplish this already. Although we feel this partial overlap between the two bills is acceptable, we wish to reemphasize our interest in S.1335.

In closing, I wish once again to express my appreciation to this Committee for its interest in legislation aimed at the protection of our national security.

Mr. Chairman, that concludes my statement, and I would be happy to answer any questions the Committee may have.